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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
(CROWN OFFICE LIST)

CO/1002/98

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Royal Courts of Justice
Strand
London WC2

Tuesday, 11th May 1999

B e f o r e:

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MR JUSTICE MOSES

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REGINA

-v-

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THE CRIMINAL INJURIES COMPENSATION BOARD

EX PARTE JOHN PHILIP PEARSON

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(Computer-aided Transcript of the Stenograph Notes of
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Official Shorthand Writers to the Court)

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MR D T ECCLES (instructed by Thomas Saul & Co., Whitefield, Manchester M45 6TF) appeared on behalf of the Applicant.

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MR R SINGH [MR J MOFFATT-JUDGMENT ONLY] (Instructed by the Treasury Solicitor, London SW1H 9JS) appeared on behalf of the Respondents.

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Tuesday, 11th May 1999.

MR JUSTICE MOSES: In this application in which I gave leave, the Applicant, Mr Pearson, seeks a review of the decision of the Criminal Injuries Compensation Board ("the Board") dated 19th December 1997. The Applicant is now 35.

On 12th August 1995, late in the evening, the Applicant was in a public house in Manchester with his girlfriend and some friends. He was asked by another friend to get back a laser torch that had been taken from that other friend by another person in the public house. The Applicant did try to retrieve the torch, speaking to the other man but with no effect. That other man assaulted the Applicant, knocking him to the ground, as a result of which, he suffered injuries which consisted of a fractured jaw, fractured cheekbone, leaving him with residual numbness to the left side of the face and headaches which, certainly at the time of the Board's decision, he was suffering from three times a week.

The single member of the Board decided that, having regard to the Applicant's previous convictions, there should be no award. The decision is recorded in a letter dated 26th August 1996, which said:

> "... The applicant possibly regards his previous crimes as motoring offences, but that is not how

> "the public or the board views them, they were all serious offences. Any award would be inappropriate. ..."

The Applicant proceeded to seek an oral hearing, as he was entitled to, before the full Board. The full Board awarded him 4,000 for general damages for pain, suffering and loss of amenity, 2,000 for loss of earnings, making it 6,000 in all, but reduced that award to one-third of the total award by two-thirds because of his previous convictions.

The Applicant's previous convictions

It was submitted on behalf of the Applicant that it was wholly unreasonable to reduce the award by two-thirds in the light of those previous convictions. Those convictions were: a conviction of being in charge of a motorcar whilst unfit through drink or drugs on 21st August 1986 by Bury Magistrates, for which he was fined 50 and his licence was endorsed; an offence of driving with excess alcohol on 8th August 1991 at Oldham Magistrates' Court, for which he was fined 80 and disqualified for 12 months (the minimum disqualification); and another offence on 22nd April 1992 by Manchester City Magistrates for an offence of driving whilst disqualified, for which he was put on probation for nine months, for driving with excess alcohol which he was disqualified for three years and put on probation for nine months concurrent, and for the driving with no insurance, for which he was put on probation for nine months.

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There was, as the Board recorded, powerful evidence that since that time the Applicant's character had improved and indeed there were positive reports about him. The Board's decision in relation to the issue of his previous convictions is given between pages 62 and 63 of my bundle.

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Having recited those previous convictions, the Board went on to say:

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> "The applicant advised us of the circumstances surrounding his convictions, the personal difficulties he was experiencing at the time the offences occurred, and his deep remorse for his actions. We were also greatly assisted by information contained in a letter forwarded from Mrs Weale, the applicant's former probation officer and by character references submitted by Mr Webster of British Gas, Captain Forrest of the Parachute Regiment and Mr Smith of MacLean and Nuttall Ltd.

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> We fully accepted the applicant's sincerity in relation to the remorse he now feels in connection with the offences he committed. We also fully accepted that he was now a responsible and law-abiding citizen, and that his last conviction had occurred over 3 years before the incident for which he was claiming compensation. However, while giving due consideration to all those factors we were of the view that the offences committed were all of such a very serious nature that they could not be ignored completely. We also took the view that the age of the convictions, especially the last and most serious conviction, was not such as to preclude our proper consideration thereof.

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> We concluded that, notwithstanding the applicant's explanation for the offences committed, his remorse, and the fact he was now a more mature individual, it would be inappropriate that a full award from public funds should be granted in this case. Nevertheless, we did consider it appropriate to take into account all those factors spoken to by the applicant and supported by the references produced in support of his application, and in the exercise of our discretion, we

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"concluded that an award should not be withheld completely. In all the circumstances we considered that an award with a two-thirds reduction should be made. ..."

The Scheme provides, as is well-known, that:

"The Board may withhold or reduce compensation if they consider that-

...

(c) having regard to the conduct of the applicant before, during or after the events giving rise to the claim or to his character as shown by his criminal convictions or unlawful conduct - and, in applications under paragraphs 15 and 16 ... [which do not apply] - it is inappropriate that a full award, or any award at all, be granted."

See paragraph 6(c) of the Criminal Injuries Compensation Scheme 1990.

It is accepted that the Board may reduce or even withhold an award notwithstanding that the previous convictions had nothing to do with the attack which led to the injuries. It is further accepted that the issue is for the Board. The Board consists of eminent and highly experienced lawyers. It is for them to evaluate whether it is appropriate to reduce or withhold an award in the light of previous convictions of an Applicant. Such a value judgment can only be impugned if the decision is outwith the range of

decisions the Board could make in that exercise of evaluation: see R v Criminal Injuries Compensation Board, ex parte Thompstone [1984] 1 WLR 1234. At page 1239D-E the Master of the Rolls, Sir John Donaldson, said:

> "In each case, although different categories of circumstances can be taken into account, the issue is the same. Is the applicant an appropriate recipient of an ex gratia compensatory payment made at the public expense? As with all discretionary decisions, there will be cases where the answer is clear one way or the other and cases which are on the borderline and in which different people might reach different decisions. The Crown has left the decision to the board and the court can and should only intervene if the board has misconstrued its mandate or its decision is plainly wrong. ..."

In clear and cogent submissions, for which I am indebted, Mr Eccles submitted, on behalf of the Applicant, that the Board could not have reasonably concluded that all the offences were very serious when compared with, for example, the offences described at paragraph 38 of the Guide to the Criminal Injuries Compensation Scheme. That paragraph deals with a number of offences in which it is said the Board could completely reject an application referring to convictions for serious crimes of violence, such as murder, rape or sexual abuse or wounding; other serious crimes such as drug smuggling or supply of drugs, kidnapping or treason (which I think at the time that that was written the offence was still a capital offence) and less serious crimes more recently or crimes of violence, such as assault, burglary or

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criminal damage or numerous convictions for dishonesty.

It is true that the offences for which this Applicant was convicted did not fall into any of those categories in which it is said the Board could completely reject an application. The Board was, however, in my judgment, entitled to consider that at least two of the previous offences were serious, namely the two offences of driving with excessive alcohol and particularly the last. In a Probation Report dated 3rd September 1996, the probation officer wrote:

> "... It is true to acknowledge that Mr Pearson had not understood the seriousness of disqualified driving when committing the offences. However, his appearance at court reinforced how seriously the offences were viewed and Mr Pearson began to appreciate how irresponsible and potentially lethal his actions were. ..."

In its decision the Board said that all of the offences were "of such a very serious nature that they could not be ignored completely". Whilst it is true that it is difficult to see how the offence of being in charge of a car whilst being drunk in 1986 could properly be described as very serious, nevertheless I should observe that the expression that the offences were "of very serious nature" was used in the context of the question whether they should be completely ignored. In the next paragraph of its decision, in my judgment, the Board asked itself the right question, namely whether, in the light of those previous convictions, taken

with the good character the Applicant had demonstrated since, it would be appropriate to make an award and to what extent it would be appropriate to make an award from public funds.

Mr Eccles submitted that the reduction by two-thirds was too severe in the light of the Applicant's improvement of character since. But it is plain from the extracts I have quoted that the Board took the positive side of this Applicant's character fully into account. Moreover, one who has been previously convicted cannot expect a reduction in the amount of the award to be in proportion to the number of offences he has committed. As Sedley J (as he then was) said with greater elegance in R v Criminal Injuries Compensation Board, ex parte Moore [1999] 2 All ER 90 at 95:

> "... The board is not required to reason out why the particular extent to reduction follows from the proved convictions: see R v Criminal Injuries Compensation Board, ex p Cook [1996] 2 All ER 144, [1996] 1 WLR 1037. Unless the conclusion offends logic - as this conclusion does not - it must stand. Logic does not restrict the effect of repeated offending to the gradual erosion of eligibility."

I am unable to say that the Board could not reasonably have reached the conclusion that it was inappropriate to award more than one-third of the full amount of damages in the light of at least two serious previous convictions. Accordingly, this argument is rejected.

Quantum

The approach that the Board ought to take is set out in paragraph 12 of the Scheme:

> "Subject to the other provisions of this Scheme, compensation will be assessed on the basis of common law damages and will normally take the form of a lump sum payment ..."

In its decision, the Board said:

> "... we considered all the medical reports before us as well as the oral evidence given by the applicant at the hearing. We accepted that the applicant had sustained a fractured jaw and fractured left cheek bone, which required 2 surgical procedures and which has resulted in residual numbness on the left side of his face. We also accepted that due to his jaw being wired the applicant had required dental treatment. However, we noted that the report obtained from the dental surgeon did not support the assertion by the applicant that he had lost 2 back teeth as a result of the assault. Furthermore, although the applicant complained of blurred vision in his left eye, we noted that the report obtained from the ophthalmic optician detected no abnormalities and could not confirm that there had been any deterioration in the applicant's vision as a result of the assault. Finally, we took note of the report obtained from the applicant's GP, which stated that the applicant had made a full recovery from his injuries, although we did accept, as stated above, that was not correct in respect of the residual numbness to the left side of the applicant's face. ..."

They then proceeded to award the sum for general damages of 4,000.

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The guidelines for the assessment of general damages produced by the Judicial Studies Board refer to Chapter 7 "(A) skeletal Injuries", "(d) Fractures to the Cheekbones" and to a figure between 4,750 to 7,500 for serious fractures of the cheekbones requiring surgery but with lasting consequences such as paraesthesia in the cheeks or the lips or some element of disfigurement. It refers, for a simple fracture of the cheekbones for which some reconstructive surgery is necessary but from which there is a complete recovery, to a figure of 2,000 to 3,000; for a simple fracture of a cheekbone for which no surgery is required, to the figure of between 1,150 to 1,450. In relation to fractures of the jaw, it is said that for a simple fracture requiring immobilisation but from which recovery is complete, the figure of between 3,000 and 4,000 is appropriate; and for a serious fracture with permanent consequences such as difficulty in opening the mouth or with eating or where there is paraesthesia in the area of the jaw, the figure of 8,500 to 14,250.

Based on those figures and accepting that the two figures should not be added together, but bearing in mind this Applicant continues to suffers from permanent numbness and at least some headaches, if not as much as three times a week now, but certainly three times a week at the time that the Board was considering this, Mr Eccles argued that the appropriate bracket was between 10,000 and 12,000. He

referred in addition to two cases in Kemp & Kemp. In Re Mendoza at L8-078 the award for a 42 year old police officer for post-traumatic migraine, after an assault when his jaw was injured, was 5,000 in 1990 which would be about 6,750 now; and in **Hambridge v Harrison** at L8-076, where there were more extensive injuries, Stephenson LJ referred to a figure of 1,000 to 1,500 for headaches back in 1973, a figure now of about 7,000. Mr Eccles submitted that the figure of 4,000 for general damages was only 40 per cent of the appropriate figure, and by awarding so low a figure the Tribunal had failed to have regard to its own guidelines and its own approach which purported to follow the range of damages that would be awarded by a court.

I must remind myself that the jurisdiction of this court is not analogous to that of the Court of Appeal when considering awards of general damages by a court of first instance. I was helpfully invited by Mr Rabinder Singh, for the Board, to recall the words of Lord Lowry in his speech in **R v Secretary of State for the Home Department, ex parte Brind and Others** [1991] 1 AC 696, where he said at page 765H to 766B:

> "... A less emotive but, subject to one qualification, reliable test is to ask, 'Could a decision-maker acting reasonably have reached this decision?' The qualification is that the supervising court must bear in mind that it is not sitting on appeal, but satisfying itself as to whether the decision-maker has acted within the bounds of his discretion. For that reason it is

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> "fallacious for those seeking to quash administrative acts and decisions to call in aid decisions of a Court of Appeal reversing a judge's finding, it may be on a question of what is reasonable. To say what is reasonable was the judge's task in the first place and the duty of the Court of Appeal, after giving due weight to the judge's opinion, is to say whether they agree with him. In judicial review, on the other hand, the task of the High Court is as described above, and the task of the Court of Appeal and, when necessary, this House is to decide whether the High Court has correctly exercised its supervisory jurisdiction."

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The Board was a body of experts to whom a decision of assessing damages had been entrusted. They read the medical reports and heard oral evidence from the Applicant. I accept that there could be cases where the Board could be demonstrated to have failed to have regard to the approach under the Scheme, namely to award damages in accordance with the common law assessment of general damages or its own guidelines. If it could be demonstrated that the minimum figure which the Board could reasonably have awarded was substantially greater than that which was awarded, then this court in its supervisory capacity could intervene, but I am quite unable to say that the minimum figure which the Board could reasonably have awarded was 10,000. I repeat, the Board saw and heard the Applicant and they read the reports. They, as experts, were in a position best to assess how the two fractures had actually affected this Applicant at the time and for the future. While I suspect that the award was too low, I am quite unable to say that this was not a

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decision which the Board could reasonably have reached. Whilst I have great sympathy for the Applicant, who has done so well since he had previously been in trouble and suffered what undoubtedly were serious injuries, I reject the argument that the decision of the Board both as to the previous convictions and as to the quantum was outwith the range of decisions it could reasonably have reached.

Accordingly, this application is dismissed.

MR ECCLES: My Lord, in those circumstances, I accept that I have to pay costs of this application. I do accept that. It has been agreed between myself and Mr Singh. It is agreed that neither party is in a position to deal with costs and neither party would ask your Lordship to make a summary assessment of costs.

MR JUSTICE MOSES: Very well. I shall order you to pay the Board's costs.

MR ECCLES: I am grateful to your Lordship for the care in which you have considered this.

MR JUSTICE MOSES: I am very grateful for your submissions which were very clear, and made me certainly understand why I gave leave.

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